tion under the police power, to such an extent that the rights of the property owner are seriously affected. Building lines are an advantage to the community at large and to the nearby property owners in particular, but it is an unwarranted extension of the doctrine to establish them under the police power. All such legislation, while it may assist to materialize the dreams of those whose highest ambition is to make other people conform to their ideas of beauty and order, is clearly in derogation of common right and personal liberty. In the matter of justice, neither the property owner nor the public will be harmed if the regulation be made under the power of eminent domain. Yet if it is enforced under the police power, the owner is compelled to contribute as a private individual and not as a member of the public at large. R. B.

MARITIME LIENS UNDER THE PRESENT LAW.—The Act of Congress of June 23, 1910[1] has done much to wipe out some of the distinctions that existed in the law on maritime liens on vessels for supplies and repairs. In fact, as was said in a recent case, *The Lord Baltimore,* 269 Fed. 824, "The act of Congress was intended to furnish a complete system in itself." It enunciated a new policy in the admiralty law of this country, clarifying the law and purging it from the many distinctions that had no real basis in the law.

Early in the history of this country there grew up a distinction between supplies furnished a vessel while in her home port and those furnished in a foreign port. In the latter case, under proper conditions, it gave rise to a lien on the vessel; in the former no lien was presumed save in the case where the statute of that State made provisions for such lien.[2] This distinction first found utterance in *The General Smith,*[3] in which Mr. Justice Story said:

> "Where repairs have been made, or necessaries have been furnished to a foreign ship, or to a ship in a port of the State to which she does not belong, the general maritime law, following the civil law, gives the party a lien on the ship itself for his security; and he may well maintain a suit *in rem* in the Admiralty to enforce his right. But in respect to repairs and necessaries in the port or State to which the ship belongs, the case is governed altogether by the municipal law of that State; and no lien is implied, unless it is recognized by that law."

Though this departure from the general admiralty law as it

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[1] Comp. St. § 7783-7787.

[2] The General Smith, 4 Wheat. 438; The Belfast, 7 Wall. 624; The Mary McCabe, 22 Fed. 750; The Roanoke, 189 U. S. 185.

[3] *Supra;* The Lottawanna, 21 Wall. 558.

existed in England and on the Continent became the established law in this country, it failed to receive the moral approval of the courts. It was much criticized. Courts refused to extend it beyond repairs and supplies as laid down in *The General Smith.*[4] In *Chapman* v. *The Engines of The Greenpoint,*[5] the court refused to extend it to include salvage, and permitted a lien though the salvage took place in the home port of the ship. In this case the court observed, "That the rule as to repairs and supplies, which early obtained a foothold in our maritime law, was not suited to the general necessities of this country, is sufficiently attested by the fact that in nearly all the states liens upon domestic vessels have been provided for by statute to supply the exceptional defects of our maritime law." Objection to the law as it existed prior to the Act of Congress is found in an elaborate and exhaustive opinion by Judge Lowell in *The Underwriter,*[6] in which the background of the distinction is traced in a most learned fashion, and its unsoundness effectively demonstrated. The judge summarizes the result of this investigation in the following words, "But, though the historical basis for the distinction is demonstrably unsound, the distinction has been established by competent authority, and cannot be abolished except by legislation." [7]

This legislation is now an established fact. Whether the distinction was historically unsound, and whether it was poor policy to have enunciated it from the beginning, is of no moment now. The entire distinction has now fallen into "innocuous desuetude" by virtue of the Act of Congress.

Under the old law, even as to supplies furnished a vessel in a foreign port, to fasten a lien on the vessel therefor, a necessity had to be established. This necessity consisted of two elements, (1) a necessity for the material or repairs; (2) a necessity for looking to the vessel for reimbursement.[8] Thus, if the supplies were necessary and the owner absent from that port, or had no credit there, such supplies were presumed to have been furnished on the credit of the vessel. But the presumption was rebuttable, and the absence of either of these necessities destroyed the presumption.[9]

As said by one court:

"As the law stood before Congress spoke, a materialman would under some circumstances have a lien, if he could prove that he had given credit to the ship, while he would not have it, if it appeared that he had trusted the owner. When it became necessary to go into an inquiry as to whether he had

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[4] *Supra.*
[5] 38 Fed. 671.
[6] 119 Fed. 713.
[7] 119 Fed. 750.
[8] Pratt *v.* Reed, 19 How. 359.
[9] The Now Then, 55 Fed. 523; The Clinton, 160 Fed. 421; The Kingston, 23 Fed. 200; The Gracie May, 72 Fed. 283.

> furnished the supplies on the credit of the ship or of the owner, the less scrupulous he was the better the chance of his getting his money. Congress said that for the future it would not be necessary to allege or prove that credit was given to the vessel." [10]

The presumption now is that a lien exists on the vessel though the repairs were made or the supplies furnished at the behest of the owner.[11] Thus, one furnishing fuel to a vessel under contract is entitled to a lien, though the bill is made out to the owner and not to the vessel.[12] In fact it was held to be immaterial to the creation of a lien whether the supplies furnished were intended to be on the credit of the vessel, in the absence of an agreement on the subject.[13]

It is to be observed that in dispensing with the necessity of pleading and proving that credit was given the vessel, Congress did not abolish the first of the above mentioned requisites, namely, the necessity for the material or repairs.[14] Maritime liens rest upon the necessity of the ship, and are not created for the sole purpose of giving an added security to the materialman or other creditor. As Mr. Justice Brandeis put it, in *Piedmont, etc., Co.* v. *Seaboard Fisheries Co*:[15]

> "The maritime lien developed as a necessary incident of the operation of vessels. The ship's function is to move from place to place. She is peculiarly subject to vicissitudes which would compel abandonment of vessel or voyage, unless repairs and supplies were promptly furnished."

This is the foundation for the lien. The libellant is therefore put on guard to know that the supplies are necessary for the vessel furnished therewith.

Under the old law, to charge a vessel for repairs or supplies, it was necessary that the person ordering had the authority to contract for them.[16] The new law allows the claimant to rely upon the apparent authority of the person in lawful charge of the vessel. But if the claimant knew that the party ordering had no authority, or by diligent inquiry could have ascertained that fact, or if the person is not lawfully in charge, no lien will arise.

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[10] The City of Milford, 199 Fed. 956, 959.
[11] Ely *v.* Murray and Tregurtha Co., 200 Fed. 368.
[12] Lower Coast Co. *v.* Gulf Refining Co., 211 Fed. 326.
[13] City of Milford, *supra.*
[14] Ely *v.* Murray and Tregurtha Co., *supra.* Where wines and liquor were supplied for an Austrian crew they were held not to be necessaries, though it was alleged that owing to the nationality of the crew, and the custom of their country, they would not have shipped if the liquors had not been supplied them. The Sterling, 230 Fed. 543. This is in keeping with the decision in The Robert Dollar, 115 Fed. 218, decided prior to the act.
[15] 254 U. S. 1, 41 Sup. Ct. Rep. 1, 3.
[16] The Sea Witch, 34 Fed. 654; The Esteban de Antunano, 31 Fed. 920.

The phrase in the act "knew, or by the exercise of reasonable diligence could have ascertained" was borrowed from *The Kate*,[17] removing the premium on negligence in inquiring into facts which would reveal the lack of authority of the person in charge. Only reasonable diligence is required. "He who is careless of other's rights will find that his own will be determined, not by what he absolutely knew, but what was in his power to find out, if he acted with ordinary and reasonable care." [18]

The purpose of the act and what it has accomplished may well be summarized in the words of Mr. Justice Brandeis: [19]

> "First, to do away with the artificial distinction by which a maritime lien was given for supplies furnished to a vessel in a port of a foreign country or State, but denied where the supplies were furnished in the home port or State. * * * Second, to do away with the doctrine that when the owner of a vessel contracts in person for necessaries or is present in the port when they are ordered, it is presumed that the materialman did not intend to rely upon the credit of the vessel, and that hence no lien arises. * * * Third, to substitute a single federal statute for the State statutes in so far as they confer liens for repairs, supplies and other necessaries. * * * The act relieves the libelant of the burden of proving that credit was given to the ship when necessaries are furnished to her upon the order of the owner, but it in no way lessens the materialman's burden of proving that the supplies in question were furnished to her by him upon order of the owner or of some one acting by his authority."

M. A. S.

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[17] 164 U. S. 458, 466.
[18] The City of Milford, *supra*, 960.
[19] Piedmont, etc., Co. *v.* Seaboard Fisheries Co., *supra*, 4.